

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**PARKWAY FOX, L.P., d/b/a
PARKWAY VILLAGE WEST**

CIVIL ACTION NO.

MAGISTRATE JUDGE

VERSUS

**MASSACHUSETTS BAY INSURANCE
COMPANY**

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, comes defendant, Massachusetts Bay Insurance Company (hereinafter “Mass Bay”), which pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and with a full reservation of all rights and defenses, hereby removes the action styled “*Parkway Fox, L.P., d/b/a Parkway Village West v. Massachusetts Bay Insurance Company*,” No. CT-002822-13, Div. III from the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis to the United States District Court for the Western District of Tennessee, Western Division. This Court has subject matter jurisdiction over the claims of Plaintiff, Parkway Fox, L.P. d/b/a Parkway Village West (“Plaintiff”), under 28 U.S.C. § 1332 as the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is properly between citizens of different states. Mass Bay respectfully submits that the grounds for removal are as follows:

THE NOTICE OF REMOVAL IS TIMELY

1.

Plaintiff filed a Complaint (“the Complaint”) entitled “*Parkway Fox, L.P., d/b/a Parkway Village West v. The Massachusetts Bay Insurance Company*,” No. CT-002822-13, Div. III on

July 2, 2013, in the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis, which is within the Western District of Tennessee, Western Division.

2.

This Notice of Removal is being filed prior to service of the Plaintiff's Complaint on Mass Bay and less than one (1) year after the commencement of the action. Additionally, there is no other defendant in this action. Accordingly, the Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

THE PARTIES ARE CITIZENS OF DIFFERENT STATES

3.

Upon information and belief, at the time Plaintiff filed its Complaint and Mass Bay filed its Notice of Removal, Plaintiff was and is a domestic limited partnership organized under the laws of Texas. Plaintiff's general partner is PVF MGMT, LLC, a domestic limited liability company organized under the laws of Texas and whose managing member is Hardam Azad, a Texas resident.

4.

At the time Plaintiff filed its Complaint and Mass Bay filed its Notice of Removal, Mass Bay was and still is a New Hampshire corporation with its principal place of business in Massachusetts.

5.

Accordingly, there is complete diversity of citizenship between Plaintiff and Mass Bay.

**THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00, EXCLUSIVE OF
INTEREST AND COSTS**

6.

The Complaint seeks coverage under Mass Bay policy number ZDD 2727001-06 (the “Policy”) for physical loss and damage to the alleged insured premises and continued damages associated with the repair of the physical damage to the alleged insured premises.

7.

Although a specific amount in controversy is not alleged in the Complaint, the Policy at issue carries a coverage limit of \$8,977,280 for property coverage, which alone satisfies the jurisdictional minimum. Additionally, Plaintiff seeks compensatory damages up to \$1,500,000.

JURISDICTION

8.

The above-described action is one over which this Honorable Court has original jurisdiction pursuant to 28 U.S.C. § 1332, as the controversy is wholly between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Therefore, in accord with 28 U.S.C. § 1441, this case may be removed to the United States District Court for the Western District of Tennessee, Western Division.

9.

Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders which have been received by Mass Bay are hereby attached to this Notice of Removal, along with the entirety of the State Court records. *See* Exhibit A.

10.

Concurrent with the filing of this Notice of Removal, written notice is being given to all parties, and a copy of this Notice of Removal is being filed with the Clerk of Court for the Circuit Court of Shelby County, Tennessee for the Thirtieth Judicial District at Memphis.

WHEREFORE, defendant, Massachusetts Bay Insurance Company, prays that this, its Notice of Removal, be deemed good and sufficient and that his aforesaid Complaint be removed from the Circuit Court of Shelby County, Tennessee, for the Thirtieth Judicial District at Memphis and that this Honorable Court enter such orders and issue such process as may be proper to bring before it copies of all records and pleadings in such civil action from such state court, and thereupon proceed with the civil action as if it had been commenced originally in this Honorable Court.

Respectfully submitted,

DICKINSON WRIGHT PLLC

BY: /s/ John E. Anderson, Sr.
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**ATTORNEY FOR DEFENDANT
MASSACHUSETTS BAY INSURANCE
COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was filed on this 25th day of July, 2013 with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all participating counsel of record.

/s/ John E. Anderson, Sr.

John E. Anderson, Sr.

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